

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
NO. 5:10-CR-93-BO
NO. 5:13-CV-430-BO

FILED IN OPEN COURT
ON 10/3/2013 W
Julie A. Richards, Clerk
US District Court
Eastern District of NC

DARYALL ANDRE HAGANS,)
 Petitioner,)
 v.)
)
UNITED STATES OF AMERICA,)
 Respondent.)

ORDER

Petitioner in this matter has filed *pro se* a motion to vacate his sentence pursuant to 28 U.S.C. § 2255 that the government, in light of *United States v. Dorsey*, 132 S. Ct. 2321 (2012), does not oppose. The Federal Public Defender was appointed on September 6, 2013, to assist Mr. Hagans in any re-sentencing proceedings.

BACKGROUND

Mr. Hagans pleaded guilty on April 27, 2010, to one count of conspiracy to distribute and possession with intent to distribute fifty grams or more of cocaine base and a quantity of cocaine powder, in violation of 21 U.S.C. § 846. Mr. Hagans was sentenced by this Court to a term of 120 months' imprisonment on August 17, 2010. In *Dorsey*, the Supreme Court held that those defendants whose crimes preceded but were sentenced after August 3, 2010, should receive the benefit of the new provisions of the Fair Sentencing Act (FSA), which became effective on that date. 132 S. Ct. at 2331.


DISCUSSION

The government agrees that Mr. Hagans should receive the benefit of the FSA as he was

sentenced after August 3, 2010, and that he would in fact benefit from such application as the mandatory minimum sentence that he would face would be lower [DE 35]. In light of the foregoing, and the hearing held before the undersigned on October 3, 2013, the Court GRANTS Mr. Hagan's motion pursuant to 28 U.S.C. § 2255 [DE 29]. For good cause shown, Mr. Hagan's motion to seal [DE 43] is also GRANTED.

Mr. Hagan's original sentence as imposed on August 17, 2010, is hereby VACATED. Mr. Hagan's new sentence shall be reflected in an amended judgment filed October 3, 2013.

SO ORDERED, this 3 day of October, 2013.


TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE